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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.C. et al., Persons Coming Under the Juvenile Court Law.

SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

B.C.,

Defendant and Appellant.

E037014

(Super.Ct.Nos. J180146 & J180147)

OPINION

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Ronald D. Reitz, County Counsel, and Julie J. Surber, Deputy County Counsel, for Plaintiff and Respondent.

Jennifer Mack, under appointment by the Court of Appeal, for Minors.

B.C. (father) the father of C.C., presently 11 years old, and K.C., presently 13 years old, appeals from an order of the dependency court terminating his parental rights. On appeal he contends that the court erred in terminating his rights because of the sibling relationship exception to adoption under Welfare and Institutions Code section 366.26, subdivision (c)(1)(E). We conclude father has waived the issue for failure to raise it in the trial court, and in any event the contention fails on the merits. Consequently, we affirm the judgment.

PROCEDURAL HISTORY AND FACTS

C.C., K.C. and N. came to the attention of the San Bernardino County Department of Children's Services (DCS) in January of 2002. Father was in prison due to failure to register as a sex offender. (Pen. Code, § 290.) Father had previously been convicted of molestation of N. and a cousin in Merced County in 1996. Mother was dying from bone cancer, and the home mother and children were living in was not fit for habitation. The house was dirty with animal feces on the floor.

A petition was filed on all three children's behalf and later amended on February 11, 2002. A combined jurisdictional/dispositional hearing was held on April 29, 2002. Mother was then dead. Father submitted on the reports prepared for the hearing. The

¹ C.C. and K.C. have a half sister, N., by another father. They also have an adult half sister, A., who has the same father as N. A. and her boyfriend, who is her domestic partner of over four years, want to adopt C.C. and K.C.

² All further statutory references are to this code unless otherwise stated.

court declared the three children to be dependents of the court and found that they came within section 300, subdivisions (d) and (g).

At the six-month review hearing (§ 366.21, subd. (e)) held on September 16, 2002, the court set a selection and implementation hearing for N. (§ 366.26). The court ordered six more months of reunification services for father as to his two biological children, C.C. and K.C.

At the 12-month review hearing (§ 366.21, subd. (f)) held on March 17, 2003, the court ordered foster care as the long-term plan for C.C. and K.C. pursuant to section 366.21, subdivision (g)(3). Father was present at the hearing, out of prison and on parole through October 2005. C.C. and K.C. had been in a number of nonrelative foster placements. Their half sister, N., had been placed with a maternal aunt and uncle, but she had run away and her whereabouts were then unknown. The case was continued for a permanency planning review hearing.

On July 29, 2004, C.C. and K.C. were placed with their 24-year-old half sister and her boyfriend in their home. They want to adopt C.C. and K.C., and are willing to maintain a sibling relationship with N., who is a full-blood sister of the prospective adoptive mother.

At the review hearing held on September 15, 2004, DCS recommended that the case be set for a selection and implementation hearing with a recommendation for adoption by the half sister. Father was present at the hearing. Counsel for father stated to the court, "I have no legal basis to object to that" The children wanted to remain

with their half sister. Father was advised in court of his right of writ review. (Cal. Rules of Court, rule 39.1B.) No writ was filed.

The selection and implementation hearing was held on November 16, 2004. Father was again present for the hearing. The parties submitted on the reports prepared for the hearing. No additional evidence was presented. On behalf of father, counsel requested that parental rights not be terminated and stated to the court that he had told father ". . . that we basically have no legal basis to avoid the adoption at this time, as it's clear in the file in today's report." Counsel did not argue that any of the exceptions to adoption applied in order to defeat termination of parental rights. The court found adoption to be the most appropriate plan and terminated father's parental rights.

DISCUSSION

Father did not raise any of the exceptions to adoption (§ 366.26, subd. (c)(1)(A)-(E)) in order to stop termination of his parental rights. Nor does he contend that the children are not adoptable. The person claiming that one of the exceptions to adoption exists bears the burden of proof to establish it by a preponderance of the evidence in the trial court. Failure to raise the exception during the hearing below amounts to a waiver of the issue on appeal, and the juvenile court does not have a sua sponte duty to determine whether an exception to adoption applies. (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295.) Father has therefore waived the issue.

On the merits, even if father had raised the issue below, his contention fails. We review the court's determination using the substantial evidence standard. (*In re L.Y.L.*

(2002) 101 Cal.App.4th 942, 947.) Substantial evidence supports a finding that the sibling relationship exception does not apply.

Section 366.26, subdivision (c)(1)(E), prevents termination of parental rights if termination would cause a substantial interference with a child's sibling relationship. Father argues that adoption of C.C. and K.C. would substantially interfere with their sibling relationship with N. who will be 18 years old in July 2005. We disagree.

N. and the children have had limited contact during the dependency largely due to N.'s incorrigibility. She ran away from the foster home of her maternal aunt and uncle. At the time of the termination hearing, N. had run afoul of the law. She had been declared a ward of the court under section 602 and was on "runaway" status from her group home.

The court must balance the children's beneficial interest in maintaining the sibling relationship in a guardianship with foster parents against the sense of security and belonging adoption and a new home would confer. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) Here both children were quite clear in their desire to stay permanently with their half sister. They did not want to be considered for adoption by anyone else. The half sister and her domestic partner of four years³ want to adopt them, and both have stated their willingness to continue the children's relationship with N. once she stabilizes. Because the prospective adoptive mother is a full-blood sister to N., there is no reason to

³ They state their intent to marry in the future. They are buying their three-bedroom, two-bath house.

question her sincerity in continuing the relationship as long as it is not detrimental to the children, i.e., in the children's best interests to have a sibling relationship with N. The children's need for the security that adoption brings is not outweighed by any harm to the sibling relationship caused by the termination of father's parental rights.

DISPOSITION

The judgment is affirmed.

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We concur:	
/s/ Hollenhorst	
	Acting P.J.
/s/ Gaut	
	J.